

Ms. Emily Logan, Chief Commissioner
Irish Human Rights and Equality Commission

Chair - members of the Committee.

On behalf of the Irish Human Rights and Equality Commission, I would like to thank the Committee for the opportunity to meet in this module of your deliberations.

I would like to very briefly outline the institutional structure and legislative basis of the Commission for members of the Committee who may be less acquainted with our work. The Commission is Ireland's independent statutory national human rights institution. It was established in primary legislation - the *Irish Human Rights and Equality Commission Act 2014*, and has been in operation since November 2014.

Professor Siobhán Mullally and myself are two of fifteen members of the Commission, appointed by our Head of State, the President, following an open competition and resolution by both Houses of the Oireachtas. We have no reporting relationship to government and account directly to the Oireachtas for our statutory functions. We appear today, to represent the views of the Commission - for the record - contained in our policy statement on a new legal and regulatory framework on abortion in Ireland, in light of its international human rights obligations - submitted to the Committee on Monday.

The Commission's independence has been recognised internationally - we have been awarded an 'A' status accreditation at the United Nations, under the UN Paris Principles. These principles set out the necessary guarantees required to ensure that a national human rights institution can carry out its functions in full independence, free from any form of political or other pressure.

Through a range of legal powers determined by the Oireachtas, we are mandated to promote and protect human rights and equality in this state.

Of most relevance to today's discussion, is Section 10(2)(b) of the 2014 Act - to 'keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality'.

Under Section 10(2)(h) of the 2014 Act the Commission is also mandated 'to consult with such national, European Union or international bodies or agencies having a knowledge or expertise in the field of human rights or equality as it sees fit'.

Ireland has ratified six of the nine core UN human rights treaties and is bound by those obligations as a matter of international law. For each treaty, there is an expert independent monitoring committee that oversees compliance - Ireland's compliance with these treaties is examined on a periodic basis and under our legislative mandate, the Commission formally participates as the national independent monitor of human rights in this process and monitors the State's compliance with recommendations.

UN Treaty Monitoring Committees have regularly raised concerns regarding the current legal position in Ireland in relation to abortion.

Most notably, in 2016 and 2017 the UN Human Rights Committee found that Ireland had violated a number of rights of the International Covenant on Civil and Political Rights, following complaints taken by Amanda Mellet and Siobhan Whelan, both of whom experienced pregnancies with fatal foetal abnormalities.

In Amanda Mellet's case the UN Human Rights Committee found a violation of Article 7 - prohibition on cruel, inhuman and degrading treatment. With the Committee of the view that many of the negative experiences could have been avoided if Ms Mellet had not been prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of the health professionals whom she knew and trusted.

The Committee also found a violation of Article 17 - protecting the right to privacy, stating that:

'the interference in Ms Mellet's decision as to how best to cope with her non-viable pregnancy was unreasonable and arbitrary.

The Committee also found a violation of Article 26 – equality before the law, taking into account the financial cost of travelling to the UK.

The facts of the 2017 Siobhan Whelan case were similar to those in the Mellet Communication and relying on the same reasoning, the Committee also found a violation of Articles 7, 17 and 26 ICCPR.

We have in our submission specifically referenced the key rights here – Articles 7, 17 and 26.

The State's response to the UN Human Rights Committee's views in the *Mellet* case, which included an 'acknowledgment' by the Minister for Health Simon Harris of its views, an ex-gratia sum of €30,000 and a detailed itemisation of the steps being taken by the State on foot of the case, further demonstrate the significance of Ireland's international legal obligations for domestic law and policy.

UN treaty monitoring bodies are the pre-eminent interpreter of Ireland's binding obligations in international law under the human rights treaties it has ratified. Their views on Ireland are therefore authoritative, and have a significant role in the interpretation, application and development of Irish law.

Thank you Chair, Prof. Mullally will take the second part of our presentation.

Siobhán Mullally, Commissioner
Irish Human Rights and Equality Commission

Thank you Chief Commissioner.

First and foremost, I will note that in the view of the Irish Human Rights and Equality Commission, the State should approach reforms on access to abortion in Ireland primarily as a matter of healthcare policy, and that to do so would be in keeping with its obligations under international human rights law.

As the Committee is aware, the Protection of Life During Pregnancy Act 2013 allows for terminations of pregnancy where there is a real and substantial risk to the life of the mother. This limited access does not meet the requirements of international human rights law.

Concerns about the barriers placed by the existing legal framework on women's right to the highest attainable standard of health, the right to privacy, to equality before the law, to non-discrimination and to freedom from inhuman and degrading treatment, as well as the State's special obligations towards minors (in particular the girl child), have been raised by several international human rights bodies.

The position taken by UN human rights treaty bodies differs from the position taken by the European Court of Human Rights. In the case of *ABC v Ireland*, as the Committee is aware, the Court concluded that abortion law in Ireland struck a fair balance between the competing interests presented. The Court relied in particular on the right to travel abroad for abortion, as being significant in applying the 'fair balance test' – and the proportionality of the interference with women's rights to private life.

As the Committee knows, a wide margin of appreciation was applied by the Court.

Ultimately the Court concluded that the constitutional prohibition on abortion in situations where a woman's health or well-being were at risk pursued the legitimate aim of the protection of morals, and reflected the profound moral

values of the Irish people. The Court did not accept that sufficient evidence had been presented of a change in those values since the adoption of the Eighth amendment. I'm happy to expand on this judgement in our discussion.

The UN Committee on Economic, Social and Cultural Rights has made clear that 'realization of women's right to health requires the removal of all barriers interfering with access to health services ... including in the area of sexual and reproductive health'. It has identified 'criminalisation of abortion' and 'restrictive abortion laws' as among these barriers.

The Committee has also specifically expressed its concern on the discriminatory impact on women who cannot afford to travel abroad to access abortion services, or access to the necessary information. These concerns were reiterated in the views of the UN Human Rights Committee. As was noted in the concurring opinion of Professor Cleveland in Mellet, who stated that 'the Committee's finding of a violation of article 26 in the author's case [...] is fully justified on grounds of discrimination arising from gender stereotyping'.

The Commission is of the view that the key areas that require attention by this Committee include the development of a legislative and regulatory framework that provides for access to abortion for reasons of:

- Risk to life and health
- Socio economic or family circumstances
- Pregnancy as a result of rape or incest
- Fatal foetal abnormality

The Commission has in the past raised concerns about the number of examinations that a girl or woman may be subjected to where she seeks treatment under the current legislation, and the effect this may have on a woman's right to respect for her private and family life. The Commission has also raised concerns about the barriers that assessment and certification requirements place before women with restricted access to medical practitioners or health information, such as women from poorer socio-economic backgrounds, women from ethnic minority groups, or women with intellectual disabilities.

A reformed framework for access to abortion services under a wider set of circumstances should avoid the creation of new processes where vulnerable women and girls may be subject to trauma, re-victimisation, delays in treatment, or other harms.

The Commission is of the view that a new framework for access to abortion in Ireland should place the decision-making process primarily in the hands of the pregnant woman in consultation with her physician.

The Commission stresses the importance of ensuring that constitutional reform avoids replicating the barriers to human rights and equality that are currently in place.

Given these considerations, the Commission recommends that the referendum announced, should allow for the development of a framework governing access to abortion that has a basis in primary legislation and regulation.

Before I finish, I would like to briefly touch on a few more themes that arise in our policy paper which are useful to highlight to the Committee here today.

As has been highlighted at the Citizens' Assembly and in other fora, the criminalisation of abortion constitutes a potentially serious chilling factor for women seeking medical care, and for health care staff providing such care. The Commission therefore is of the view that, notwithstanding limitations that may be placed on access to abortion by legislation and regulation, the State should decriminalise abortion in all circumstances, as required by the UN Committee on the Rights of the Child in its Concluding Observations on Ireland adopted in 2016.

Finally, the Commission and others have highlighted serious shortcomings in Ireland's sexual and reproductive health education system. In parallel to a reformed legislative and regulatory framework for access to abortion in Ireland, it is crucial that the State develop a comprehensive, scientifically objective, sexual and reproductive health education policy.

I thank the Committee for their attention, and we would welcome questions and further discussion.